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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,469	05/21/2001	Matthias Kleespies	KLEESPIES (PCT) (CIP)	6681

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EXAMINER

WARE, DEBORAH K

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 12/31/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/915,469**

Applicant(s)  
**Kleepsies**

Examiner  
**Deborah Ware**

Art Unit  
**1651**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jul 26, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some\* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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Claims 1-6 are presented for reconsideration on the merits.

The amendment filed July 26, 2002, has been received and entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-6 are rendered vague and indefinite for the recitation of "biopolymer mixture" wherein such term is indefinite because it is unclear what is intended to be "a biopolymer mixture". The mixture appears to be liquid and grains, therefore, what is the polymer per se. It is uncertain what "a biopolymer mixture" is? The metes and bounds of the claim can not be determined. For example, after separating what happens to the biopolymer per se? Also can the biopolymer be dried solid bodies?

Claim 2 is further rendered vague and indefinite for the recitation of "waste" wherein it is uncertain how nutrients are waste? Waste can be a lot of things, and thus, it is uncertain what waste is to mean in the claim. The metes and bounds of the claim can not be determined.

Claim 5 is further rendered vague and indefinite for usage of the term "propellant" wherein is unclear what a propellant is used for per se. It is uncertain that the term as an art recognized meaning pertinent to this art.

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Claim 6 is further rendered vague and indefinite for the recitation of "chemically modifying" since it is unclear how such modification is taking place. What is being modified and how is it modified, how is the step carried out? The metes and bounds of the claim can not be determined.

2. Claims 1-4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over newly cited Murofushi et al. (A). in view of newly cited Pidoux et al. (U).

3. Claims are drawn to a process for making solid bodies.

4. Murofushi et al. teach a process for making kefir grain soluble substance wherein milky kefir grains are mixed and polysaccharide or kefir grains obtained therefrom which are sieved and then the grains are dried, note col. 4, lines 30-50.

5. Pidoux et al. teach sugary kefir grains, note page 416.

6. The claims differ from Murofushi et al. in that milk kefir is the source of kefir grain for the process and not sugary kefir.

7. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was filed to replace the milk kefir grain of Murofushi et al. with the sugary kefir grain of Pidoux et al. in order to obtain a process for making solid bodies from kefir grains. Each of the process steps are disclosed by the cited prior art. To select for sugary kefir grains is clearly within the skill of an artisan desiring to obtain solid bodies thereof since sugary kefir grains provide gel-forming polysaccharide, note page 415, see summary of Pidoux. Such gel forming polysaccharides would have been expected to pour as a mixture into molds for drying as

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disclosed by Murofushi. Sugar is considered as confectionery waste per se in the prior art. Freeze drying is clearly disclosed by the cited prior art. Chemical modification is clearly suggested by Pidoux, see page 417, all lines. Therefore, the claims are rendered prima facie obvious over the cited prior art. Clearly one of skill would have been motivated to select for sugary kefir grains to make solid bodies from them since they are disclosed to be gel-forming polyscharrides per se. Successful results would have been expected with the usage of sugary kefir cultures. The claims are obvious over the cited prior art.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murofushi et al. and Pidoux et al. as applied to claims 1-4 and 6 above, and further in view of newly cited Kulkarni et al. (B).

Claims and references are discussed above with the exception of Kulkarni et al. which teaches a propellant added to a polysaccharide mixture of which improves drying. Note the brief summary text, and also note that chemical modification is disclosed by the cited reference.

It would have been further obvious to employ propellants before drying to improve upon the solid bodies at the time the claimed invention was filed. These agents are clearly disclosed in the prior art to be useful and to select and optionally use them in the claimed invention is an obvious modification of the cited prior art.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

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The remaining references listed on the enclosed PTO-892 and/or PTO-1449 are cited to further show the state of the art.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is (703) 308-4245. The examiner can normally be reached on Mondays to Fridays from 9:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

  
**DEBORAH K. WARE**  
**PATENT EXAMINER**

Deborah K. Ware

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December 29, 2002